



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 8, 1991

Ms. Robin Younghaus
Office of the State Auditor
P. O. Box 12067
Austin, Texas 78711-2067

OR91-477

Dear Ms. Younghaus:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13132.

The State Auditor has received a request for "any information (unless legally excepted) in the custody of the Texas State Auditor's Office related to the West Texas State University investigation conducted by your office during the years 1990 and 1991." Specifically, the request includes all work papers; all correspondence; telephone records and logs for a certain period which show calls made by certain individuals and to certain individuals; State Auditor's guidelines, procedures, and requirements relating to investigations; and authorization and instructions received from the Legislative Audit Committee relating to the West Texas State University investigation.

You have submitted to us for review four files. File 1 contains "a memorandum, an index, and an interview summary, a transcript, and a tape, typical of the evidence found in audit working papers." File 2 contains "memoranda prepared during the course of the investigation by attorneys and of agendas and minutes of meetings relating to the investigation." File 3 contains "samples of telephone bills and other telephone records relating to the investigative audit." You claim the information contained in files 1, 2, and 3 is excepted from required public disclosure by sections 3(a)(1), 3(a)(3), 3(a)(8), 3(a)(11), and 3(a)(16) of the Open Records Act. File 4 contains information you are prepared to release and for which you claim no exceptions.

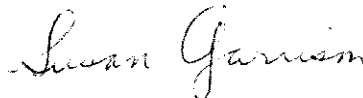
Section 3(a)(3) excepts from disclosure

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Open Records Decision No. 555 (1990) held that section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to the pending litigation. Section 3(a)(3) requires parties to a lawsuit to seek relevant information through the normal process of discovery. Open Records Decision No. 551 (1990). In a letter to the Texas State Auditor dated August 22, 1991, Mr. T. Boone Pickens, on whose behalf the request for information was made, expresses his dissatisfaction with the outcome of a state audit investigation and requests that the report be withdrawn. Mr. Pickens also criticizes the State Auditor's Officer for its "sloppiness and disregard for individual rights" and maintains he would be justified in "seeking corrective action and, perhaps, damages." Mr. Pickens advises that "[w]e . . . are carefully considering our legal remedies." On the basis of this letter, we conclude that litigation may be reasonably anticipated. The information contained in files 1, 2, and 3 clearly relates to the anticipated litigation and may be withheld from disclosure under section 3(a)(3). Please note that this ruling applies only for the duration of the litigation at issue and only for information which is not disclosed through the discovery process or by court order. Because we resolve this request under section 3(a)(3), we need not address the applicability of sections 3(a)(1), 3(a)(8), 3(a)(11), and 3(a)(16) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling, rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-477.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee

SG/GK/lcd

Ref.: ID#s 13132, 13324

cc: Mr. Jack W. Gullahorn, P.C.
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